IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:: O R D E R ::

S.B. CIVIL WRIT PETITION NO. 730/1996

Rajasthan Agriculture University, Bikaner & Anr.
Vs.
State of Rajasthan and Ors.

DATE OF ORDER :: 30.8.2007

PRESENT

HON'BLE MR. BHANWAROO KHAN, J.

Mr. M.S. Singhvi, for the petitioners.
Mr. O.P.Rathi, Deputy Government Advocate.
Mr. Mukesh Vyas, for the respondent No.3.

The petitioners have challenged the award dated 23.3.1995 passed by the Labour Court, Bikaner, by which retrenchment of services of respondent No.3-workman was found to be invalid. The workman was directed to be reinstated in service on the basis of daily wages and from the date of reinstatement to receive the full payment which he was getting at the time of termination of his services.

In brief, facts of the case are that the respondent No.3-workman was employed in Rajasthan Agricultural University, Bikaner on 7.5.1986 on daily wages basis @ Rs.14/- per day. He has worked in the said University till 25.1.1987 and completed 240 days

in one calender year. But the petitioners without assigning any reason or complying with the provisions of the Industrial Disputes Act, 1947 (for short 'the Act of 1947' hereinafter) has been retrenched from service. A reference was made by the government to the Labour Court to adjudicate upon the validity of the termination of services of the respondent No.3-workman. The termination of the services of the respondent No.3-workman was found to be invalid and illegal by the Labour Court because the petitioners have not followed or complied with the statutory provisions as provided under Section 25-F of the Act of 1947.

The petitioners admitted that the respondent-workman was appointed on 7.5.1986 on daily wages basis and from 25.1.1987, the respondent-workman voluntarily left the services of the petitioner and did not turn up. It was only the fault of the respondent-workman, who left the job suo moto, in such circumstances, the compliance of the statutory provisions provided under Section 25-F of the Act of 1947 does not arise.

The Labour Court after recording evidence of both the parties passed the impugned award.

Heard learned counsel for the parties.

Learned counsel for the petitioners pleaded

that the respondent-workman left the job suo moto, therefore, he is not entitled for any relief for reinstatement and there is no question of infringement of Section 25-F of the Act of 1947. In such circumstances, the respondent-workman is not entitled for reinstatement. The Labour Court has inherently went against the factual as well as legal aspect of the matter.

Learned counsel also pleaded that the respondent-workman has not served in the petitioner-department for 240 days also, hence, it cannot be held that he has continuously served for more than 240 days in one calendar year. Learned counsel cited 2006(6) SCC 221 – RBI Vs. Gopinath Sharma; 2006(9) SCC 434 – Haryana State Electronics Vs. Mamni; 2006(4) SCC 1 – Secretary State of Karnataka Vs. Uma Devi and 2006(6) SCC 516 – Municipal Council, Samrala vs. Sukhwinder Kaur in support of his arguments.

From the evidence recorded, it is borne out clearly that the respondent-workman was initially employed on 7.5.1986 and he was terminated or retrenched on 25.1.1987 by oral order of Dr. P.K. Mathur. It is also alleged that the respondent-workman remained absent from 9.11.1986 to 26.11.1986, hence, he has not completed total period of 240 days as required under the statute, but this argument is of no avail to the learned counsel as from the date of

appointment till date of termination, after subtracting the period of absence, the period comes out more than 240 days. Whatever evidence adduced by the petitioners before the Labour Court does not go to show that after termination or retrenchment of the services of the respondent-workman, he was neither asked to join the services nor compliance of Section 25-F was ever made by the petitioners, as neither one month's notice in writing was given nor the respondent-workman was paid anything as compensation as provided under the Section itself.

The judgment cited by the learned counsel are of no avail to him because in the present case there is a total violation of Section 25-F of the Act of 1947. In RBI Vs. Gopinath Sharma, reported in 2006(6) SCC 221, it has been held that the respondent-workman was engaged on the basis of need of work on day to day basis and every year a list of workmen was prepared and the workman being employed on the need basis which is not a case here.

In Haryana State Electronics Vs. Mamni, reported in 2006 (9) SCC 434 though the retrenchment or termination of service was found to be invalid, but when the department issued an advertisement, the workman did not apply, so compensation was awarded.

The dispute in Secretary State of Karnataka

Vs. Uma Devi, reported in 2006 (4) SCC 1 does not relate to the Industrial Disputes Act, but relates to public employment, absorption, regularisation or permanent continuance of temporary, contractual, casual, daily-wage or ad hoc employees and the same does not have any legal right to be appointed, regularised or absorbed in the department. Simply the appointment, if made de hors the rules, the continues service rendered cannot confer the person with a legal right to be absorbed, appointed or regularised.

In Municipal Council, Samrala Vs. Sukhwinder Kaur, reported in 2006(6) SCC 516, Section 2(oo) (bb) was made applicable whereas in the instant case, it is not on the proposal being made by the employer himself that compensation was paid to the workman.

This Court is not giving any relief of regularisation, appointment, absorption or making him permanent on the post on which the workman was working. Here, in the instant case, the question is of violation of statutory provisions that have not been complied with at the time of termination of his services and whatever remedy provided under the statute, the workman is entitled as a matter of right. The workman was working on daily wages basis and the same relief was given by the Labour Court. The Labour Court has also not asked to make permanently absorbed the employees, of course, it is true that the

absorption, appointment, regularisation or making him permanent against a sanctioned post, the order cannot be issued either by the Labour Court or by this Court, but if a statute provides that in breach of certain conditions of statute or in default there is a legal right or remedy available under the statute, the same can be given to the workman.

In-spite of that, as per the evidence and judgment of the Labour Court it is born out that the persons junior to the respondent-workman are working in the department and this is admitted case of the petitioners also which shows on the post on which the respondent-workman was working. The other junior workmen, who are working in the department then the right of reinstatement of the respondent No.3 is fortified because junior to the respondent-workman cannot remain in service and if this is done then termination or retrenchment of respondent-workman is illegal and void and in violation of Section 25-G of the Act of 1947. The petitioners have not complied with the mandatory provision of Sections 25-F and 25-G of the Act of 1947.

Learned counsel pleaded that time gap from the date of termination of the workman till today is more than 20 years, and he has only rendered more than 240 days service, so instead of reinstatement, it would be appropriate if a compensation be awarded to

the workman and he has cited decision in S.B.Civil Writ Petition No.1790/1995 – The Ganganagar Central Cooperative Bank Ltd. vs. Judge Labour Court, Bikaner & Anr. in which compensation of Rs.25,000/- instead of reinstatement was awarded.

It is true that compensation in place of reinstatement can be awarded, if the situation warrants, but it is admitted case of the petitioners that the persons Junior to the respondent- workman are working in their department. The termination or retrenchment should not depend on the whims of a particular person or officer. The workman was terminated without any reason or basis. Simply on an oral order issued for removal from the job he has been removed and the persons junior to him are still in service and performing the job. If this is so, the compensation will not serve the purpose as compensation is simply a monetary relief and not a regular job. If the persons junior to the respondent-workman is performing and giving the service, then the retrenched workman should also be reinstated in the service of the petitioners. In such circumstances, this Court is of the opinion that compensation could not serve the fruitful purpose of the workman.

Resultantly, there is nothing in the impugned award of the learned Labour Court dated 23.3.1995, which requires interference by this Court. Thus there

is no force in the writ petition and the same deserves to be dismissed.

The writ petition stands dismissed. There shall be no order as to costs.

(BHANWAROO KHAN)J.

Rm/-